

MODRAIL CORPORATION  
30 Brookside Road  
West Orange, New Jersey

269A028

Date SEP 26 1979

50.00

CC Washington, D.C.

10846  
RECORDATION NO. .... Filed 1425

SEP 26 1979 - 10 55 AM

INTERSTATE COMMERCE COMMISSION

September 24, 1979

Secretary of the Interstate  
Commerce Commission  
Washington, D.C. 20423

Re: Recordation of a lease, entitled "Agreement", dated  
January 19, 1976, between Modrail Corporation and  
New Hope and Ivyland Railroad Company (herein the  
"Lease")

Dear Sir:

I am delivering to you with this transmittal letter the following  
materials for recording:

- 1) The original Lease dated January 19, 1976; and
- 2) Two certified true copies of the original Lease  
with attached Affidavits of a notary public; and
- 3) A check in the amount of \$50.00 to cover recording  
expenses.

The names and addresses of the parties to the transaction evidenced  
by the Lease are as follows:

- 1) The lessor: MODRAIL CORPORATION  
30 Brookside Road  
West Orange, New Jersey
- 2) The lessee: NEW HOPE AND IVYLAND RAILROAD COMPANY  
152 Monroe Avenue  
Penn del, Pennsylvania 19047

A general discription of the equipment covered by the Lease is  
as follows:

Twenty-eight (28) Box Cars, numbered 801, 802, 803,  
804, 805, 806, 807, 808, 809, 810, 811, 812, 813,  
814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824,  
825, 826, 827, and 828.

I EDWIN STEVENS hereby represent and warrant that  
I am an executive officer of Modrail Corporation one of the parties

RECEIVED  
SEP 26 10 44 AM '79  
I.C. COM. BR.  
FEE OPERA

*Donna Lilly*  
*C. Davis*

Secretary of the Interstate  
Commerce Commission  
Page Two

having knowldege of the matters set forth in the Lease.

Kindly return the original Lease submitted herewith to:

ALAN I. FALK  
WIDETT SLATER & GOLDMAN P.C.  
60 STATE ST  
BOSTON MASS 02109

Thank you.

Very truly yours,

MODRAIL CORPORATION

By:  PRES.

Interstate Commerce Commission  
Washington, D.C. 20423

9/26/79

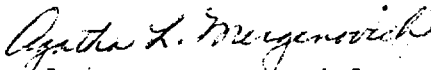
OFFICE OF THE SECRETARY

Calum B. Anderson  
Widett, Slater & Goldman, P.C.  
Sixty State Street  
Boston, Mass. 02109

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/26/79 at 10:55am , and assigned re-recording number(s) .10846 & 10846-A & 10847

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

AFFIDAVIT

10846

RECORDATION NO. .... Filed 1425

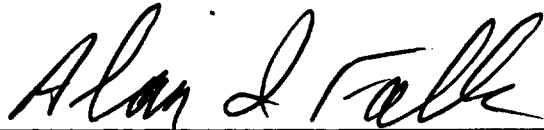
Commonwealth of Massachusetts )  
County of Suffolk ) ss.

SEP 26 1979 -10 55 AM

INTERSTATE COMMERCE COMMISSION

I, Alan I. Falk, Esq., being duly sworn, depose and say:

- 1) I am a notary public under the laws of the Commonwealth of Massachusetts.
- 2) I hereby certify that I have compared the annexed copy of the Agreement dated January 19, 1976 between MODRAIL CORPORATION and NEW HOPE AND IVYLAND RAILROAD COMPANY with the original document and such annexed copy is a true, correct and complete copy of the original in all respects, including the dates, signatures and acknowledgements.



Alan I. Falk, Notary Public

My Commission Expires: \_\_\_\_\_

ALAN I. FALK, Notary Public  
My Commission Expires Nov. 29, 1985

*E.S.*  
AGREEMENT made this 19th day of January, 1976, between  
MODRAIL CORPORATION, a New Jersey corporation, having its  
principal place of business at 30 Brookside Road, West Orange,  
New Jersey, hereinafter called "Company" and NEW HOPE AND IVYLAND  
RAILROAD COMPANY, a corporation having its principal place of  
business at 152 Monroe Avenue, Penn del, Pennsylvania 19047, hereinafter  
referred to as "Railroad".

WHEREAS, Company is the owner of all right, title and  
interest in and to several boxcars and other railroad equipment as  
specified in the schedule annexed hereto as Exhibit "A" and which is  
hereinafter referred to as "equipment" and

WHEREAS, Company desires to place said equipment  
into the national railway transportation system of the United States;  
and

WHEREAS, Railroad is a railroad corporation associated  
with the national railway system, having the capacity to place the  
boxcars into the national railway system.

NOW, THEREFORE, it is agreed between the parties as  
follows:

1. Company agrees to lease to the Railroad and  
Railroad agrees to hire from the Company the equipment and properties  
described in Schedule A annexed hereto, for the term hereinafter  
specified, subject to the terms and conditions of this Agreement.

2. Title to each piece of equipment leased hereunder  
shall remain with the Company during the term of the lease thereof and  
any extension or renewal thereof granted by Company at all times

thereof. Upon termination of the lease, the equipment shall, at the expense of the Company, be returned to Company at the place designated by Company for such disposition, as Company shall determine, but this shall not be deemed to authorize Railroad or any other person to operate any equipment or to incur any obligation or liability upon behalf of Company.

3. All equipment, attachments, accessories or repairs at any time made to or placed on the equipment or property leased or to be leased, shall become a part thereof, and become the property of the Company.

4. (a) Railroad agrees to pay to Company as rental for use of each piece of equipment described in Schedule A annexed hereto as monthly payments during each month of the period of the lease the sum or sums equalling ninety (90) per cent of the gross revenue. The term "gross revenue" shall consist of per diem mileage and incentive payment made by the users of the equipment specified in Schedule A.

(b) The first rental payment for each piece of equipment shall be due and payable ten days after payment is received by Railroad.

(c) The Company shall transmit to the Railroad on or before the 10th day of each month during the term hereof, detailed accounting for all per diem mileage and incentive payment made by the users of the equipment referred in Schedule A, during the preceding month together with the tabulation for the payments due and to become due from the Railroad to Company hereunder for each piece of equipment.

(d) Company agrees to pay installation costs with respect to each piece of equipment.

5. (a) The duration of this agreement shall be for a period of five years commencing on the 19th day of January, 1976, and terminating on the 19th day of January, 1981.

(b) During this five year period, it is agreed that if any state or federal authorities shall issue any mandatory order compliance with which shall render continued operations substantially unprofitable to either of the parties hereto, then and in that event, either party shall have the option to terminate this agreement at any time according to the following terms and conditions.

(1) The term "substantially unprofitable" as used hereinbefore shall mean such a reduction in monthly net profit as to reasonably prudent businessman would dictate immediate termination of operations.

(2) The party to electing shall exercise its option by forwarding written notice thereof to the other party by certified mail, return receipt requested, at least thirty (30) days in advance of the date set for termination and such notice shall be accompanied by a photocopy of such order and its written statement justifying contention that continued operations will be substantially unprofitable; it being agreed and understood by the parties hereto that the burden of proof and justification for the exercise of the option to terminate shall be that of the party so electing.

(c) In the event that either party shall make the election in accordance with the foregoing terms and conditions, Railroad hereby agrees to return the equipment specified in Schedule A

to the premises designated by Company at Company's sole cost and expense.

6. (a) Neither party hereto shall assign its right, title and interest or liabilities hereunder without the written consent of the other party, which consent shall not be unreasonably withheld.

(b) In the event of such an assignment, whether by Company or Railroad, the non-assigning party hereby agrees to keep and perform all of the obligations to be performed by it hereunder and will indemnify and save harmless the assignor for any failure to do so.

7. The Company hereby grants to the Railroad the option to purchase all or any part of the equipment specified in Schedule A annexed hereto for the sum of \$8,000.00 per boxcar, upon the terms and conditions hereafter set forth. The Railroad shall give notice in writing by certified mail, return receipt requested, of its intention to exercise the said option and the precise number of boxcars which it intends to purchase pursuant to such exercise which notice must be given on or before the 31st day of December, 1976, and provided further that the Railroad's right to purchase said equipment shall be terminated and become null and void on failure of the Railroad to fully perform one or more of the obligations imposed upon it hereunder.

8. (a) After delivery of equipment to the Railroad and its acceptance by Railroad and until redelivery thereof to Company as provided herein, Railroad shall have no responsibility for its maintenance or care. During such time, Company shall maintain, service and keep in good repair each piece of equipment at its own expense, normal wear, tear and depreciation excepted; all risks of loss or damage thereto shall be borne by Company.



(b) In the event that a piece of equipment is damaged, Company shall forthwith repair or cause such equipment to be repaired. In that event Company shall bear the sole cost for such repairs. In the event that equipment is damaged and repaired and Railroad is billed for such repairs, in every such instance Company agrees to assign to Railroad any and all rights Company may have under the insurance policies carried by Company with respect to such damage, as well as any rights Company may have to be reimbursed for such damages pursuant to insurance coverage, carried by others, as reimbursement to Railroad for any sum or sums expended by the Railroad in connection with the repair of such equipment.

(c) Company shall, at its own expense, add on "Railroad" as an additional insured under Company's general insurance coverage with respect to all activities evolving out of the entirety of this Agreement by the parties.

9. While cars are on Railroad property, Company agrees to indemnify, protect and save harmless Railroad, its agents, servants, successors and assigns from and against all losses, damages, entities, claims, demands and expenses including legal expense, of whatsoever nature (a) arising out of the use, condition (including, but not limited to, latent and other defects and whether or not they are discoverable by it) or operation of any piece of equipment by whomsoever used or operated; or, in the event Company shall be in default hereunder as defined herein, (b) arising out of or resulting from the condition of any equipment sold or disposed of after use by Railroad. The indemnities and assumptions of liability herein provided for shall continue in full force and effect, notwithstanding the termination of this agreement, whether by expiration of time, by operation of law, or otherwise.

10. Company shall be permitted to display notice of ownership of equipment by means of stencil or plate affixed thereto. Railroad shall not allow any other person, association or corporation to place its name upon any of the equipment specified in Schedule A, unless and until the Railroad exercises its option to purchase, upon the terms and conditions herein before set forth.

11. The Railroad hereby represents that it shall exert its best efforts to maximize full utilization of the equipment specified in Schedule A annexed hereto.

12. The Railroad hereby accepts this Agreement and the obligations imposed upon it hereunder, and agrees to accept delivery and possession of each item of equipment specified in Schedule A.

13. In the event of default by Railroad or Company, hereunder, for any reason whatsoever, Company may at its option and with ten days notice and demand on Railroad, declare this Agreement in default and thereupon all equipment shall be delivered at the sole cost and expense of Company, by Railroad's agents, servants, and/or employees to the place specified by Company, and all rights of the Railroad therein shall terminate. Alternatively, and without effecting a waiver of the right of Company to compel Railroad's delivery of the equipment as aforesaid, Company or its agents may take possession of the equipment wherever it is found, with or without process of law and for that purpose may enter upon premises of Railroad and remove the same in an orderly manner without damaging Railroad's property. Company may hold, use, sell, lease or otherwise dispose of all or any part of the equipment without affecting the obligation of Railroad.

14. (a) This Agreement of Lease shall be governed by, construed and enforced in accordance with the laws of the State of Pennsylvania.

(b) This Agreement of Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing, executed by the parties.

IN WITNESS WHEREOF, Company and Railroad have caused these presents to be duly executed the day and year first above written, by their duly authorized representatives.

MODRAIL CORPORATION

BY Edmund Stevens  
President

BY William H. Hain

WITNESS: John Lee

Edna Zamba

NEW HOPE AND IVYLAND RAILROAD COMPANY

BY James McHugh  
President

BY Robt. W. Hugh  
Secretary

WITNESS: Ruth Young

Lorraine Bulvin

State of Massachusetts  
County of Suffolk

On this 24th day of September, 1979, before me personally appeared Edwin Stevens to me personally known, who being by me duly sworn, says that he is the President of Modrail Corp., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Calvin B. Anderson  
Notary Public

My commission expires: Oct 25, 1985

State of Pennsylvania  
County of Bucks

On this 25th day of September, 1979, before me personally appeared James McHugh to me personally known, who being by me duly sworn, says that he is the President of New Hope and Ivyland Railroad Company, that the seal affixed to the foregoing instrument (Agreement dated January 19, 1976 between Modrail Corp. and New Hope and Ivyland Railroad Company) is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Effie Shaffer  
Notary Public

EFFIE SHAFFER  
NOTARY PUBLIC  
P.O. Box 196, Penndel, Bucks County,  
Pennsylvania 19047

My Commission Expires August 29, 1981

My commission expires: